IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 217 of 1984
With
FIRST APPEAL No. 1724 of 1984

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GENERAL MANAGER - Appellant(s)
Versus
VAGHRI KARRAMSHIBHAI K & 3 - Defendant(s)

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Appearance :

First Appeal No. 217 of 1984:

Ms. Archana Patel for Mr. Hardik C. Raval for appellant.

Mr. R.N. Shah, for respondent No.2.

First Appeal No. 1724 of 1984:

Mrs. Sushma S. Shah for Mr. Sunil K. Shah for appellant.

Ms. Archana Raval for Mr. Hardik C. Raval for respondent No.2.

Mr. Rajni Mehta for respondents No. 3 and 4.

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 15/10/2007
ORAL JUDGMENT

These two appeals, preferred under Section 110D of the Motor Vehicles Act, 1939, arise from the judgment and award dated 11th April 1983 passed by the Motor Accident Claims Tribunal, Nadiad in Motor Accident Claims Petition No. 641 of 1980.

2. The appellant in First Appeal No. 217 of 1984 is the Gujarat State Road Transport Corporation [hereinafter referred to as "the Corporation"]. The owner of the offending vehicle Bus No. GTH 5303, the appellant in First Appeal No. 1724 of 1984 is the claimant.

3. On 19th May 1980 the appellant was travelling in the offending Bus No. GTH 5303 on Baroda to Khambhat route. At about 7.30 in the evening, the bus had head on collision with the oncoming tanker bearing Registration No. GTG 2792. On account of the said collision, the right side of the bus was torn apart injuring several passengers, the claimant being one of them. The claimant suffered fracture on the lower end of the right hand humerus and the upper end of the right hand radius. The claimant filed the above referred Claim Petition No. 641 of 1980 for compensation in the sum of Rs. 1 lakh. According to the claimant, he was a labourer earning Rs. 10 per day. On account of the fracture suffered by him, the Doctor had advised amputation of the right hand. The right hand had suffered deformation

resulting into 25% permanent disability. The claimant supported his claim by Doctor's evidence. The Doctor opined that the claimant was treated as outdoor patient. The claimant had suffered 25% permanent partial disability. He also deposed that the deformity caused in the right hand of the claimant could be corrected by another surgery. This surgery would cost around Rs. 2000 and that after operation the disability would be reduced to 20%. Considering the outdoor treatment taken by the claimant, the 20% permanent partial disability, medical expenses incurred, the medical expenses estimated for the correction surgery, and the loss of actual income and future income, the learned Tribunal awarded compensation in the sum of Rs. 19,700.

4. Feeling aggrieved, the Corporation has preferred the above Appeal No. 217/1984. According to the Corporation, the compensation awarded by the Tribunal is excessive. The claimant has preferred the above Appeal No. 1724 of 1984. The claimant has asked for enhancement of the compensation.

5. Mrs. Shah has submitted that the learned Tribunal has erred in estimating the income of the claimant at Rs. 300 per month and in computing the loss of future income on the basis of 20% permanent partial disability of the right hand. She has submitted that though the physical disability might be 25% or 20%, the learned Tribunal has erred

in not considering the functional disability suffered by the claimant. Ms. Patel has assailed the judgment. She has submitted that considering the single fracture suffered by the claimant and the treatment as an outdoor patient the compensation amount of Rs. 10,000 under the head 'Pain, Shock and Suffering' is excessive. She has further submitted that in absence of any evidence, except the oral say of the claimant, the learned Tribunal has erred in estimating the monthly income of the claimant at Rs. 300. She has submitted that the amount of compensation be suitably reduced.

6. I do not see any substance in the submissions made by the learned advocates. Keeping in view the age of the claimant, the nature of injury suffered by him, the medical treatment, the permanent partial disability suffered by him, the wages earned by him as a labourer, I am of the opinion that the compensation awarded by the Tribunal is just and proper. Neither it requires to be enhanced nor it requires to be reduced.

7. For the reasons stated above, both the Appeals are dismissed. The parties will bear their own cost. The Registry shall maintain copy of this Judgment in each appeal.

[Ms. R.M. Doshit,J.]

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